

KALLEN L. KRAUSE,

Appellant,

v.

Secretary, DEPARTMENT OF
HEALTH AND SOCIAL SERVICES and
Administrator, DIVISION OF MERIT
RECRUITMENT AND SELECTION

Respondents.

Case No. 89-0057-PC

DECISION
AND
ORDER

On May 25, 1989, the appellant filed a letter of appeal relating to one or more vacant limited term employment (LTE) positions at the respondent's Lincoln Hills School. Specifically, the appellant contests the requirement that candidates for Youth Counselor LTE positions have prior Youth Counselor experience, a degree in social work, psychology or police science, or have either law enforcement or military service experience. In an interim decision and order dated June 29, 1989, the Commission considered the question of whether it had jurisdiction over the matter, added DMRS as a respondent and provided the respondents a period of time in which to indicate whether they acceded to the exercise of jurisdiction by the Commission or to raise jurisdictional objections. The interim decision and order stated in part:

According to §ER-Pers 10.04(2), Wis. Adm. Code, LTE recruitment and selection procedures must be approved by the administrator of the Division of Merit Recruitment and Selection:

(2) In order to safeguard the public interest, recruitment and selection procedures must be approved by the administrator, and the appointing authority shall maintain such records of the procedures followed in making limited term appointments as are determined to be necessary by the administrator. Limited term appointments shall be made so as to contribute to a competent work force with due consideration given to affirmative action.

Pursuant to §230.44(1)(a), Stats., all decisions of the administrator are appealable directly to the Commission. It is possible that the

conduct being complained of here would fall outside of the scope of "recruitment and selection procedures." However, in deciding an issue of this nature, the facts must be construed most favorably to the appellant (who is unrepresented) and there is essentially no record of the actions taken by DMRS or of any actions which may have been taken by DHSS pursuant to authority delegated by DMRS. There is also no record on which the Commission can determine whether the standards allegedly utilized in screening out applicants for the LTE positions were substantive rather than procedural, or involved a decision made directly or on a delegated basis by the administrator. In the absence of such a record, it would be inappropriate to dismiss this matter.

On July 19, 1989, DHSS filed a motion to dismiss for lack of subject matter jurisdiction. The parties were provided an opportunity to file briefs in support of their positions. In its brief, DHSS argues as follows:

It is the Respondent's position that the decision at issue in the instant case is a substantive one dealing with an LTE selection decision, not a procedural one dealing with the LTE recruitment and selection procedures.

The procedure for recruitment of LTE's appears at section 224.050 of Wisconsin Personnel Manual (Limited Term Employment). The section provides that the procedures set forth in Chapter 230, Stats., may be modified to expedite the LTE appointment process. It goes on to suggest what some of the modifications might be. The first of these states as follows:

1. Job related qualifications for positions should be determined by employing agencies based on their evaluation of the requirements of the position.

This provision states clearly that the decision regarding qualifications is left up to the employing unit and therefore, not a decision of the Administrator. Respondent's decision to require certain qualifications of the applicants interested in the LTE Youth Counselor positions therefore cannot be appealed under 230.44(1)(a), Stats.

The appellant did not file a brief in response.

This matter arises from the decision to require that candidates for Youth Counselor LTE positions have specified experience or training. Respondent's brief and the quoted provision of the Wisconsin Personnel Manual indicate that this decision was made by the appointing authority rather than by DMRS and that the decision was substantive rather than procedural. The appellant

has not contested the statements found in the respondent's brief. Even though the quoted portion of the Personnel Manual did not go into effect until after the decision in question, there is no indication that the current policy is inconsistent with the previous policy and practice. ¹

¹The new chapter in the Wisconsin Personnel Manual concerning limited term employment was issued on June 1, 1989. At the time the chapter was issued, the Department of Employment Relations also issued a bulletin explaining the provisions. The bulletin described the "noteworthy" changes reflected in the new chapter. None of the listed changes related to section 224.050.

ORDER

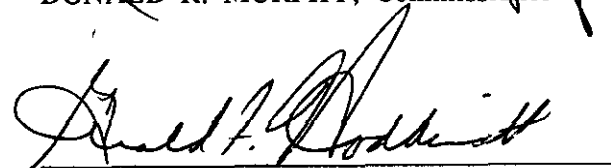
This matter is dismissed for lack of subject matter jurisdiction.

Dated: October 4, 1989 STATE PERSONNEL COMMISSION


LAURIE R. MCCALLUM, Chairperson

KMS:kms


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner

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